

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5255 of 1993

with

SPECIAL CIVIL APPLICATION No 5256 of 1993

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.
2. To be referred to the Reporter or not? No.
3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge?
No.

JABBARBHAI HAKIMBHAI

Versus

COLLECTOR

Appearance:

In Special Civil Applications No. 5255 & 5256 of 1993

MR MB FAROOQUI for Petitioner

MS SD TAKATU, A.G.P. Respondent No. 1

MR HM BHAGAT for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 23/02/98

ORAL JUDGEMENT

The facts in both these petitions are similar and

they involve identical question of law. Petitions are, therefore, with the consent of the learned advocates disposed of by this common judgment.

2. The petitioners in both these petitions applied for quarry lease for mining granite from land bearing survey No. 516 situated at village Laloda of Taluka Idar, District Sabarkantha. Under orders dated 30th November, 1992 both the petitioners were granted permit to excavate 20 tons of granite within 60 days subject to the terms and conditions contained in the said permits. Two of the relevant terms were to the effect that the permit holder shall not remove any material excavated by him after expiry of the period of the permit and any mineral excavated in excess of the permit or in breach of the terms of the permit shall be confiscated by the Government. It appears that few days before expiry of the said permits both the petitioners made application for renewal of the permits. Renewal was refused by the Collector, Sabarkantha under his orders dated 17th May, 1993. It is also referred in the said order that if aggrieved, the applicant may prefer appeal before the Additional Director of Geology and Mining. However, the petitioners have preferred to approach this Court under Article 226 of the Constitution of India to statutory appeal provided under the Gujarat Mines and Mineral Rules, 1966.

3. Learned advocate Mr. Farooqui appearing for the petitioners in both the petitions has submitted that there was no cogent reason for the respondents authorities to refuse renewal of the permit granted to the petitioners. He has submitted that no satisfying reason has been given by the respondents authorities for refusal of renewal of the permit. Ms Talati learned A.G.P. appearing for the respondent authorities has submitted that both the petitioners were guilty of breach the terms of the permits. She has further submitted that land bearing Survey No.516 of village Laloda of Taluka Idar was a "gauchar" land. Pursuant to the resolution dated 30th October, 1992 passed by the village Panchayat under order dated 18-11-1992 the said land was vested in the Government and thereafter the parcels of said land were leased out for mining activities. However, on the application made by the Sarpanch of the village Laloda an inquiry was made by the Collector, Sabarkantha and it was found that the Resolution dated 30th October, 1992 purported to have been passed by the village Panchayat and received by the Collector was fake document and after holding the inquiry as aforesaid and hearing the village Sarpanch, the Collector, Sabarkantha was satisfied that

the resolution dated 30th October, 1992 submitted to the Collector on which the Collector had acted was a fake document. He, therefore, under order dated 5th April, 1993 cancelled the earlier order dated 18th November, 1992 vesting the land bearing Survey No. 516 into the Government. Thus, the land Survey No. 516 had ceased to be Government land and continued to be the "gauchar" land in the hands of the village Panchayat. The said land, therefore, was not available to the respondent authorities for granting permit for mining activities and the petitioners, therefore, could not have been granted permit for mining activities. She has further submitted that even otherwise looking to the report of the spot inspection made by the respondent authorities it appears that the petitioners have not carried out actual mining activities on the plot of land for which permit was granted. The mining activities have been carried out by the petitioners on the southern side of the land for which permits were granted to the petitioners. Further, the petitioners have excavated granite far more than the permit i.e. Petitioner of Spl. C.A. No.5255 of 1993 excavated some 112 tons of granine instead of 20 tons and the Petitioner of Spl. C.A. No.5256 of 1993 excavated 36 tons of granite instead of 20 tons for which the permit was granted. Further, the petitioners have removed mineral excavated by them from the mining area after expiry of the permit and even during pendency of these petitions. Thus, both the petitioners have committed breach of the terms of the permit.

5. It, does, appear that the petitioners applied for lease of the piece of the land admeasuring 2 Hectare out of Survey No. 516 on 25th November, 1992. Pending the said applications the petitioners were granted permit for 60 days referred to hereinabove. The land was again vested in the village Panchayat and the petitioners could not have been granted permit. However, in the representation made by the petitioner is Spl. C.A. No.5256 of 1993 he has referred to the lease granted to four persons some time in the month of February, 1993 and May 1993. This factum has not been denied by the respondents herein. In the order of refusal made on 17th May, 1993 the respondents authorities have not referred to the order dated 5th April, 1993 vesting the land in the village Panchayat. It has also not referred to the breach of terms of the permit alleged to have been committed by the petitioners. It, therefore, does appear that the credibility of the orders made by the respondent authorities is questionable. However, in view of the passage of time, no further orders can be made on these petitions except that the petitioners' application dated

25th November, 1992 for mining lease be processed in accordance with law.

6. These petitions are, therefore, allowed. The respondents are directed to process the application for mining lease made by the petitioners on 25th November, 1992 in accordance with law. Necessary orders in this regard may be made within a period of 2 months from the date of receipt of copy of this order. In the event the petitioners' applications for mining lease are rejected the orders must be supported by the reasons. In both the petitions rule is made absolute, with no order as costs.

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